SUPREME COURT, U.S.

No. 1540

Supreme Court, U.S.
FILED
APR 5 1971
E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

FRANK BERZANSKIS,

Petitioner,

vs.

RICHARD J. DALEY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

WARREN D. WOLFSON
30 N. LaSalle Street
Chicago, Illinois 60602
FInancial 6-0285
Attorney for Petitioner,
Frank Berzanskis.

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented for Review	2
Constitutional Provisions And Statutes Involved	2
Statement	4
Reasons for Granting the Writ	7
Conclusion	10

AUTHORITIES CITED

Cases

Finn's Liquor Shop, Inc. v. State Liquor Authority, 24 N.Y.2d 647, 653, 249 N.E.2d 440 (1969)	8
Mapp v. Ohio, 367 U.S. 643	7
One 1958 Plymouth Sedan v. Commonwealth of Pennsylvania, 380 U.S. 693	9
Silverthorne Lumber Company v. United States, 251 U.S. 385, 392	8
United States v. Chicago, M.,St.P.&P.R. Co., 282 U.S. 311, 328-329	9

Appendices:

	PAGE
Opinion of the Illinois Supreme Court	App. 1
Order of the Circuit Court of Cook County	App. 8
Judgment of the Illinois Supreme Court	App. 9
Search Warrant	App. 11
Complaint for Search Warrant	App. 12
Notice of Revocation Hearing	App. 13
Counsel's Statement of Position	App. 15
Motion Filed at Revocation Hearing	App. 16
City's Statement of Position	App. 19
Testimony at Revocation Hearing	App. 20, 21
Order of Revocation	App. 21
Hearing before License Appeal Commission	App. 22
Order of License Appeal Commission	App. 24
Petitioner's Memorandum in Circuit Court	App. 26
Notice of Appeal	App. 29

In the Supreme Court of the United States

No.

FRANK BERZANSKIS,

Petitioner,

vs.

RICHARD J. DALEY, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

Frank Berzansksis, petitioner, prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in this case Jan. 25, 1971.

OPINION BELOW

The opinion of the Supreme Court of Illinois is not yet reported. (The opinion is appended herein as Appendix A.) The opinion of the Circuit Court of Cook County consists of a signed order. (See Appendix B.)

JURISDICTION

The judgment of the Court below was entered January 25, 1971 (Appendix C). Rehearing was not sought. Jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED FOR REVIEW

1. Once a court has entered an order suppressing evidence, can that same evidence later be used in an administrative proceeding to revoke the liquor license held by the object of the illegal search?

2. Is stolen property, properly suppressed in a criminal proceeding because of an invalid search warrant, admissible at a subsequent liquor license revocation hearing?

3. When a citizen applies for and receives a liquor license, does he waive the right to later assert his Fourth Amendment rights at a license revocation hearing?

Constitutional Provisions and Statute Involved

1. The Fourth Amendment, United States Constitution.

2. The Fourteenth Amendment, United States Constitution.

3. The statute relied on in part by the Illinois Supreme Court, Smith-Hurd Illinois Annotated Statutes, Chapter 43, Section 190 (1934), which provides as follows:

§ 190. *Search warrant*—Complaint, form and requisites—Verification

Whenever complaint is made in writing, verified by affidavit to any judge of any court having cognizance of criminal offenses, that complainant has just and reasonable grounds to believe and does believe that alcoholic liquor is manufactured, possessed kept for sale, used or

transported, in violation of this Act, or any mash, still or other property designed for the manufacture of alcoholic liquor is possessed in any premises which are not licensed hereunder, (particularly describing and designating such property in said complaint), the judge may issue a search warrant as hereinafter provided; provided, however, no search warrant shall be necessary for the inspection or search of any premises licensed under this Act, and provided, further, that no search warrant shall be issued for the search of premises in use for residence purposes. The property seized on any such warrant shall not be taken from the officer seizing the same on any writ of replevin or other like process.

Each complaint shall be substantially in the following form:

State of Illinois, }
County of Cook. } ss.

Complaint for Search Warrant.

The complaint and affidavit of ——— (name of complainant), of ——— (his residence), made before ——— (name of officer) one of the ——— (official title of officer), in and for said ——— (county, city or village, as the case may be), on this ——— day of ——— 19—, being first duly sworn, upon his oath says: That he has just and reasonable grounds to believe, and does believe that alcoholic liquor is now unlawfully (manufactured possessed, used, disposed of or kept for sale, or any mash, still or other property designed for the illegal manufacture of alcoholic liquor is possessed therein, as the case may be), to-wit: At and within a certain ——— (here describe the house, building, premises, boat, vehicle, receptacle or other place to be searched, with particulars as to the location sufficiently to identify it, stating the name of the person occupying the same, if known), in the ——— (city, village or town of) ———, in the county and state aforesaid; that the following are the reasons for his belief, to-

wit ——— (here insert the facts upon which such belief is based). Wherefore he prays that a search warrant may issue according to law.

_____

_____

(Signature of complainant.)

Subscribed and Sworn to before me this —— day of —— 19—.

_____

(Name of officer.)

_____

(Official title of officer.)

STATEMENT

On August 4, 1966, officers of the Cook County Sheriff's Police Department entered Frank Berzanskis' premises.

They were armed with a search warrant. (See Appendix D for the search warrant and supporting affidavit.)

In the course of the search, items of personal property were seized. Berzanskis was charged in the Circuit Court of Cook County with the offense of Theft.

On September 21, 1966, Berzanskis filed a Motion to Quash the warrant, alleging fatal defects under the Fourth and Fourteenth Amendments to the United States Constitution.

The Motion to Quash the warrant was sustained and the court entered an order suppressing all evidence seized in the search. The case then was dismissed by the State. No appeal was taken.

That ended the State's efforts to proceed criminally against Berzanskis. But part of the premises searched consisted of a tavern, and on January 16, 1967 Berzanskis

was notified Chicago's Local Liquor Control Commissioner would try to revoke his liquor license. The charges against Berzanskis consisted solely of alleged possession of stolen property on August 4, 1966. (Appendix E is the Notice of Hearing.)

The property listed by the Commissioner was the same property previously suppressed in the Circuit Court.

At the beginning of the license revocation hearing counsel for Berzaniskis urged the position taken throughout the proceedings below: evidence suppressed on Fourth Amendment grounds could not be used in the revocation proceeding. (See Appendices F and G for Berzanskis' statement and the motion filed at the beginning of the administrative proceeding.)

Berzanskis raised his Fourth Amendment objection to use of the property by the Commissioner throughout the administrative hearing (e.g., Appendix H).

In addition to the licensed tavern, the building named in the warrant and searched by sheriff's deputies housed a grocery store, Berzanskis' five-room living quarters, and a basement. A two-car garage was attached. Deputies searched the entire premises, the living quarters being their first stop (Appendix I).

There never was any suggestion by the searching officers that their purpose was to enforce liquor laws or make a tavern inspection. They were looking for stolen property (Appendix J).

The Commissioner heard testimony about the search warrant being quashed (Appendix K).

On May 29, 1967, Berzanskis received notice that the Local Liquor Control Commissioner had revoked his license (Appendix L). The order was based solely on possession of the property seized during execution of the faulty search warrant.

Berzanskis then pursued his remedy before the City of Chicago License Appeal Commission. There, the only issue he raised was the Commissioner's consideration of evidence previously suppressed in the criminal proceeding (Appendix M).

The License Appeal Commission, on August 9, 1967, reversed the Commissioner, finding his order of revocation was "not supported by substantial evidence in the light of the whole record." (See Appendix N)

The Local Liquor Commissioner then filed a complaint for administrative review in the Circuit Court. There, too, Berzanskis' position was that evidence ruled to have been illegally seized could not be used to revoke his liquor license. (See Appendix O for Berzanskis' Memorandum filed in the Circuit Court.)

Rejecting Berzanskis' Fourth Amendment argument, the Circuit Court reinstated the Commissioner's order revoking the liquor license (Appendix B).

Berzanskis then appealed to the Supreme Court of Illinois (Appendix P).

As the Court observed in its opinion (Appendix A), "Defendant has appealed directly to this court because the case involves questions arising under the Federal Constitution." And, "The only issue before this Court is whether the suppressed evidence was admissible before the liquor control commissioner."

In its opinion, the Illinois Supreme Court held that warrantless searches of premises housing a liquor business do not offend the Constitution. Agreeing that the "search was conducted with an apparently invalid warrant by the sheriff's police for the purpose of criminal prosecution," the Court nonetheless held the evidence seized could be used in the revocation proceeding.

One justice dissented.

REASONS FOR GRANTING THE WRIT

A.

The Illinois Supreme Court has decided important questions of federal constitutional law which have not been, but should be, settled by this Court.

By allowing unlawfully seized evidence to be used in a liquor license revocation hearing, the Illinois Supreme Court has carved out a significant and dangerous exception to the Fourth Amendment exclusionary rule.

In this case, sheriff's police obtained and executed a warrant that was fatally defective. The fact that licensed premises were included in the search was incidental to the warrant's purpose—seizure of stolen property.

This was not and never pretended to be a premise inspection or part of a regulatory program. The searching officers never suggested they were seeking to enforce Illinois liquor inspection laws. Their first stop was Berzanskis' living quarters, not his tavern.

Thus, this case does not involve the power of a state to authorize warrantless searches as part of a licensing program. This was not an administrative search.

The Fourth Amendment exclusionary rule, made binding on the states in *Mapp* v. *Ohio,* 367 U.S. 643, is aimed at deterring official lawlessness. The decision below would encourage bypassing of proper search warrant procedures by any law enforcement officer intent on harassing a liquor licensee.

The danger inherent in such a holding was recognized by the New York Court of Appeals in *In the Matter of Finn's Liquor Shop, Inc.* v. *State Liquor Authority*, 24 N.Y.2d 647, 653, 249 N.E.2d 440 (1969). There, the court decided illegally obtained evidence could not be used by the state to secure a liquor license revocation, Chief Judge Fuld saying:

> "To the extent that the State, or its agents can bypass the deterrent effect of the exclusionary rule by using the fruits of an illegal search in a 'civil' or 'administrative' proceeding, the incentive for enforcement and investigative personnel to exceed constitutional limitations on their activity remains and the effectiveness of the rule as a deterrent is diminished. Recognizing this, the courts have never hesitated to apply the exclusionary rule to a variety of proceedings, including those which, at least in form, are not of a criminal character."

The question of whether a liquor licensee surrenders his claim to Fourth Amendment protection is one that ought to be decided by this Court.

B.

The Illinois Supreme Court has decided a federal question in a way that conflicts with constitutional principles set down by this Court.

There is nothing new about the concept that the Fourth Amendment does not allow a governmental agency to profit from an unlawful search. The classic statement was made by Mr. Justice Holmes in *Silverthorne Lumber Company* v. *United States*, 251 U.S. 385, 392:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the Court, but that it shall not be used at all."

Justice Holmes made no exception for liquor licensees in *Silverthorne,* nor does the Fourth Amendment.

Any proceeding which might penalize a person for the commission of an offense must be consistent with the Fourth Amendment. *One 1958 Plymouth Sedan* v. *Commonwealth of Pennsylvania,* 380 U.S. 693.

Here, police officers, with no thought of enforcing liquor laws, obtained a search warrant that clearly affronted the Fourth Amendment. A judge so ruled. Now, the fruits of that search have been used to revoke a liquor license. We submit that requiring the police to obey the law is much more important than the question of whether Frank Berzanskis sells whiskey.

Simply labelling the liquor license a "privilege" does not end the discussion. As this Court has said, "The right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution." *United States* v. *Chicago, M.,St.P.&P.R. Co.,* 282 U.S. 311, 328-329.

Berzanskis ought to have been protected by the Fourth Amendment in the administrative proceeding just as he was in the criminal prosecution. To say he is entitled to any less because holding a liquor license is a "privilege" would be to "manipulate out of existence" his Fourth Amendment protection by use of a label.

CONCLUSION

The opinion of the Illinois Supreme Court, holding a liquor licensee waives his Fourth Amendment protection in a revocation hearing, raises a substantial federal constitutional question not yet decided by this Court, although prior opinions have established principles of constitutional protection that appear to conflict with the Illinois court's holding. This petition for a writ of certiorari should therefore be granted.

Respectfully submitted,

WARREN D. WOLFSON
30 N. LaSalle Street
Chicago, Illinois 60602
Financial 6-0285
Attorney for Petitioner